

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN, JAIPUR
BENCH, JAIPUR.

J U D G M E N T

S.B.CIVIL MISC. APPEAL NO.808/1996
(Gopal Krishan Pareek Vs. Bhawani Shanker
and ors.)

DATE OF JUDGMENT : 13-04-2007

P R E S E N T

HON'BLE MR.JUSTICE R.S.CHAUHAN

Mr.K.N.Tiwari, for the appellant.

Mr.Dheeraj Sharma & Tripurari Sharma, for respondents.

REPORTABLE

BY THE COURT:

This appeal arises out of award dated 1.5.1996 passed by the Motor Accident Claims Tribunal, Jaipur city, Jaipur. For 9% of disability, the learned Tribunal has awarded compensation of Rs.15,000/- to the appellant. The appellant is still aggrieved by the said compensation amount. Hence this appeal.

2. The brief facts of the case are that on 23.10.1996, around 1.00 PM when the appellant was riding his scooter near Government Hostel, a car, bearing registration No.RJV-4713, collided with the scooter. Consequently, the appellant suffered certain injuries. Therefore, he filed the claim petition before the learned Tribunal. In order to substantiate his case, he examined himself and produced

two witnesses. The respondent no.1 also examined a Single witness. After going through the oral and documentary evidence, the learned Tribunal awarded compensation as aforementioned.

3. Mr.K.N.Tiwari, learned counsel for the appellant, has vehemently argued that according to Sec.140 of the Motor Vehicles Act, 1988 (hereinafter referred to be as 'Act of 1988"), the appellant was entitled to a minimum compensation of Rs.25,000/- . However, he has been granted compensation to the extent of only Rs.15,000/-. Therefore, the learned Tribunal has erred in granting the compensation at lower side.

4. On the other hand, Mr.Dheeraj Sharma, learned counsel for the respondent Nos.1 and 2 has contended that according to the appellant himself, he has suffered a tissue injury on the knee and according to the disability certificate issued by the Medical Board, the extent of disability is only upto 9%. Therefore, it is not a permanent disability as defined under Sec.142 of the Act of 1988. Since the appellant has not suffered any permanent disability, his case is not covered by Sec.140 of the Act of 1988. Moreover, in the year 1996, a compensation of Rs.15,000/- was just and reasonable.

5. We have heard learned counsel for the parties and perused the impugned award.

Section 140 of the Act of 1988 read thus:

“140. Liability to pay compensation in certain cases on the principle of no fault.- (1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) The amount of compensation which shall be payable under sub-section (1) in respect of the death of any person shall be a fixed sum of [fifty thousand rupees] and the amount of compensation payable under that sub-section in respect of the permanent disablement of any person shall be a fixed sum of [twenty-five thousand rupees].

(3) In any claim for compensation under sub-section (1), the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person.

(4) A claim for compensation under subsection (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement.

(5) Notwithstanding anything contained in subsection (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force:

Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or under section 163A."

Section 142 of the Act of 1988 reads thus:

"142. Permanent disablement.- For the purposes of this Chapter, permanent disablement of a person shall be deemed to have resulted from an accident of the nature

referred to in sub-section (1) of section 140 if such person has suffered by reason of the accident, any injury or injuries involving:-

- (a) permanent privation of the sight of either eye or the hearing of either ear, or privation of any member or joint; or
- (b) destruction or permanent impairing of the powers of any member or joint; or
- (c) permanent disfiguration of the head or face.”

6. A bare perusal of these provisions would reveal that Section 140 would come into operation only if the case falls under Sec.142 of the Act of 1988. Permanent disability has been defined by Section 142 as the injury or injuries involving permanent privation of the sight of either eye or the hearing of either ear, or privation of any member or joint, or destruction or permanent impairing of the powers of any member or joint, or permanent disfiguration of the head or face.

7. In the present case, there has neither been permanent privation or privation of any member or joint or destruction of any member or joint. Therefore, clearly the appellant has not suffered any permanent disablement. Hence, his case does not fall within the ambit of Sec.140 of the Act of 1988. Therefore, the contention of the learned counsel for the appellant is without any merit.

8. Considering the fact that the appellant has suffered merely disability of 9% and that too injury to the tissue, compensation of Rs.15,000/- granted in the year 1996 is just and reasonable.

9. Thus, this appeal has no force. It is, hereby, dismissed.

R.S.CHAUHAN,J.

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